

monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed Letter of Authorization in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.62(c) of this chapter, a Letter of Authorization may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

Subpart H—Taking of Marine Mammals Incidental to Space Vehicle and Missile Launches at Kodiak Launch Complex, Alaska

SOURCE: 76 FR 16318, Mar. 23, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 16318, Mar. 23, 2011, subpart H was added, effective Mar. 22, 2011 to Mar. 22, 2016.

§ 217.70 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in space vehicle and missile launch activities at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to 32 juvenile and adult Steller sea lions (*Eumetopius jubatus*), 1,125 Pacific harbor seals (*Phoca vitulina*) of all ages, and 17 harbor seal pups.

§ 217.71 Effective dates.

Regulations in this subpart are effective from March 22, 2011 through March 22, 2016.

§ 217.72 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to § 216.106 of this chapter, the Alaska Aerospace Corporation and its contractors may incidentally, but not intentionally, take Steller sea lions and Pacific harbor seals by Level

B harassment and harbor seal pups by Level A harassment or mortality in the course of conducting space vehicle and missile launch activities within the area described in § 217.70(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in § 217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 217.73 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106 of this chapter.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 217.74 Mitigation.

(a) The activity identified in § 217.70(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 217.70(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 of this chapter and 217.76 must be implemented. These mitigation measures include (but are not limited to):

(1) Security overflights by helicopter associated with a launch will not approach occupied pinniped haulouts on Ugak Island by closer than 0.25 mile (0.4 km), and will maintain a vertical distance of 1000 ft (305 m) from the haulouts when within 0.5 miles (0.8 km), unless indications of human presence or activity warrant closer inspection of the area to assure that national security interests are protected in accordance with law;

(2) For missile and rocket launches, holders of Letters of Authorization must avoid launches during the harbor seal pupping season of May 15 through

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June 30, except when launches are necessary for the following purposes: human safety, national security, space vehicle launch trajectory necessary to meet mission objectives, or other purposes related to missile or rocket launches.

(3) All flights by fixed-wing aircraft associated with the marine mammal abundance quarterly surveys must maintain a minimum altitude of 500 ft (152 m) and remain 0.25 miles from recognized seal haulouts.

(4) If launch monitoring or quarterly aerial surveys indicate that the distribution, size, or productivity of the potentially affected pinniped populations has been affected due to the specified activity, the launch procedures and the monitoring methods will be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes may be made through modifications to a given LOA, prior to conducting the next launch of the same vehicle under that LOA.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§217.75 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§216.106 of this chapter and 217.76 for activities described in §217.70(a) are required to cooperate with NMFS, and any other Federal, State, or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, NMFS, by letter, e-mail or telephone, prior to each launch. If the authorized activity identified in §217.70(a) is thought to have resulted in the take of marine mammals not identified in §217.70(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), within 48 hours of the discovery of the take.

(b) Holders of Letters of Authorization must designate qualified protected species observers, approved in advance

by NMFS, as specified in the Letter of Authorization, to:

(1) Deploy for AAC a remote camera system designed to detect pinniped responses to rocket launches for at least the first five launches conducted under these regulations. AAC will conduct visual monitoring for at least 2 hours before, during, and 2 hours after launch;

(2) Ensure a remote camera system will be in place and operating in a location which allows visual monitoring of a harbor seal rookery, if a launch during the harbor seal pupping season cannot be avoided;

(3) Relocate the camera system to or re-aim the camera system on another haulout to be chosen in cooperation with NMFS after the first five launches with harbor seals present;

(4) Review and log pinniped presence, behavior, and re-occupation time data from the visual footage obtained from the remote camera system and report results to NMFS within 90 days post launch;

(5) Obtain, whenever a new class of rocket is flown from the Kodiak Launch Complex, a real-time sound pressure and sound exposure record for documentation purposes and to correlate with the behavioral response record. Two monitors shall be used: one shall be placed at the established recording location known as Narrow Cape, and the other as close as practical to the remote video system;

(6) Conduct quarterly aerial surveys, ideally during midday coinciding with low tide, to obtain data on pinniped presence, abundance, and behavior within the action area to determine long-term trends in pinniped haulout use. Results of these quarterly surveys will be reported once as part of the year-end summary report that will accompany the request for a new LOA.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Alaska Region Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch;